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Supreme Court U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

CASE NO. 83-6148

ROBERT A. TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE TO

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

WHETHER THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE STATE COURT'S FINDING THAT PETITIONER'S STATEMENT WAS VOLUNTARY, WHERE SUCH FINDING WAS MADE LARGELY UPON THE CREDIBILITY OF WITNESSES AND WHERE THE STATE COURTS PROPERLY APPLIED THIS COURT'S PRECEDENTS IN PASSING UPON THE QUESTION.

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I. OPINION BELOW

The Florida Supreme Court's opinion in this cause was reported as Teffeteller v. State, 439 So.2d 840 (Fla. 1983), and a copy of such is included in Respondent's appendix (See Appendix, part A).

II. JURISDICTION

Review is sought pursuant to 28 U.S.C. §1257(3).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Although Petitioner has contended that the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, as well as Florida's capital sentencing statute, §921.141 Fla. Stat. (1981), are involved sub judice, inasmuch as Petitioner's sentence of death has been vacated, Respondents are unable to see the applicability of the statute or the Eighth Amendment.

IV. STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case, but suggests that its discussion of the procedural framework within which the instant issue was presented to the state courts is inadequate. The following represents the factual background necessary to view Petitioner's question in the proper perspective:

Simply by way of background, three states are involved in this case. After committing the instant crime, Petitioner made something of a cross-country tour. He was initially arrested in Georgia, in reference to a Texas fugitive warrant; his vehicle, which displayed clearly visible bloodstains and bullet holes, was held by the Georgia authorities

as an instrument of the crime involved in Texas. During Petitioner's "stop" in Georgia, he was visited by two Florida detectives in reference to the instant charges, at such time, on February 27, 1979, he gave such detectives written consent to search his vehicle, such search producing some of the physical evidence introduced against Petitioner at his trial in this matter, and further provided statements to the gentlemen. After entering a plea as to the charges facing him in Texas, Petitioner made a statement to the Texas officials in reference to the Florida charges; such statement, on March 21, 1979, is the subject of the instant petition. One week later, while still in Texas, Petitioner made further statements to the Florida investigators, again in reference to the instant charges.

The statement at issue in this proceeding, i.e. that made on March 21, 1979 to various Texas authorities, was, as noted, one of several statements of Petitioner used against him at his trial and the instant basis alleged for suppression, i.e. lack of voluntariness of such due to an alleged misleading advisement, was only one of such bases presented to the trial court. Petitioner alleged inter alia that the statement at issue had been obtained in violation of his right to extradition and that the statement was a by-product of an earlier allegedly illegal search and seizure in Georgia of his vehicle in February of 1979. Petitioner raised something of an "omnibus" theory of suppression, arguing that the physical evidence obtained from his vehicle by the Florida officials, as well as all subsequent statements by him to the authorities of Texas or Florida, should be suppressed on the basis of the illegality

of such initial vehicle search. Petitioner's theory was that, after realizing that his car had been searched improperly, he felt that he possessed no further rights left to waive. Hence, all subsequent statements, even those following the advisement pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), were less than voluntary. (See Appendix, Part D, 197-200).

In order to resolve the myriad suppression issues raised, the trial court held an extended suppression hearing on October 8-13, 1980; Petitioner's extradition argument was resolved prior to his first trial and was not reasserted. At the hearings, Petitioner testified, as did state witnesses Eaton and Elliott; with the concurrence of counsel, the trial judge also considered the prior testimony and depositions of witnesses Baxter, Legg, Eaton, Elliott and Blankenship. Judge Foxman made an explicit ruling as to the issue Petitioner seeks this Court to consider; the judge starkly found Petitioner to be untruthful and stated that he chose to believe the law enforcement officers in areas where the testimony conflicted. Specifically, the judge found that District Attorney Baxter had told Petitioner that he [Baxter] did not know Florida law regarding the admissibility of statements and that Petitioner had not been misled thereby. All statements were found to have been knowingly, freely and intelligently made (See Appendix, Part C, 31-196, 192-3; Part D, 201-363).

Respondent would also note that at the point during Petitioner's trial when his statement of March 21, 1979 was introduced, Petitioner offered no contemporaneous objection (Appendix, Part B, Pages 21-30). Petitioner had earlier moved to exclude the statement as an improper attempt at

impeachment (Appendix, Part B, pages 13-17); however, no reiteration was made of the original suppression motion. Whereas Petitioner did object at the time that his second statement, that of March 28, 1979, was admitted, it is unclear in the instant petition whether Petitioner is arguing that admission of the March 21st statement was error in isolation, or whether admission of such statement was error in regard to the part it played in "admitting" the second statement of March 28th, or both.

On appeal, Petitioner raised all of his suppression issues together and the Florida Supreme Court did not comment upon any in its decision in this cause.

V. REASONS FOR NOT GRANTING THE WRIT

The rather anomalous procedural posture of the instant issue, as described above, is one cogent reason that the instant writ may safely be denied. Petitioner's failure to object at trial to the admission into evidence of the March 21, 1979 statement constitutes procedural default under Florida law, see e.g. Roban v. State, 384 So.2d 683 (Fla. 4th DCA 1980), and would have similar effect in a federal habeas corpus proceeding. See Wainwright v. Sykes, 433 U.S. 72 (1977). Accordingly, the fact that the Florida Supreme Court was silent on this issue is perhaps not surprising and Respondent would contend that Petitioner has failed to demonstrate that he properly presented this question below. In Street v. New York, 394 U.S. 576 (1969) this Court held that where the highest court of a state has failed to pass upon a federal question, it will be assumed that the omission was due to lack of proper presentation in the state courts, unless

demonstrated otherwise. Street applies in the instant situation and Respondents would simply note that their "merits" argument as to this issue during Petitioner's state appeal was made out of an abundance of caution, in light of the interlocking nature of Petitioner's suppression arugments, and cannot be said to have conferred preservation upon this point.

In the same vein, as noted in the preceding statement of the case, the question presented in the instant petition was one of several suppression issues raised below. Whereas Respondent does not question Petitioner's right to "pare-down" his argument for presentation at this juncture, this Court is the first to consider Petitioner's particular argument without all of its "protective coloring", i.e. the other suppression arguments. Once the instant voluntariness question is placed "center stage", it is clear that Petitioner's prayer for relief constitutes a request for this Court to afford him a second appeal or to, at minimum, redetermine the credibility of those witnesses who testified in the state proceeding. Respondent does recognize that this Court has granted certiorari in instances where it has been alleged that a state court has allowed into evidence an involuntary confession. See e.g. Chambers v. Florida, 309 U.S. 227 (1940); Blackburn v. Alabama, 361 U.S. 199 (1960); Haynes v. Washington, 373 U.S. 503 (1963); Brooks v. Florida, 389 U.S. 413 (1967). However, in contrast to the above, in this case no precedent of this Court has been overlooked or misapprehended, no factual determination has been made where support for such was lacking in the record and no consti-

tutional wrong has been left unredressed. No reason exists for this Court to exercise its discretionary jurisdiction to review the instant conviction, in that Petitioner's individual dissatisfaction with the rulings of the state courts, based in large part upon assessment of witness credibility, does not present a question of overriding national import.

Presumably, had the Florida courts misapplied the law in this case, their "error" would have occurred in relation to the cases cited by Petitioner, to-wit: Miranda, supra, Johnson v. Zerbst, 304 U.S. 458 (1938), Greenwald v Wisconsin, 390 U.S. 519 (1968), Clewis v. Texas, 386 U.S. 707 (1967), Townsend v. Sain, 372 U.S. 293 (1963) or Blackburn v. Alabama, supra. Yet, a close reading of such cases results in only doubt as to their applicability or a recognition that, to the extent that they are applicable, they have been correctly followed by the state courts below. Certainly, in contrast to the four cases last named, the instant case does not represent an instance in which the State's own "facts" indicate that a constitutional wrong has occurred. In Townsend, it seemed indisputable that the prisoner's confession had followed the usage of a chemical truth serum; in Blackburn, doubts as to the prisoner's mental capacity seemed inescapable. Similarly, in Clewis and Greenwald, the confessions at issue had been made by those suffering such physical infirmities as prolonged lack of food or sleep. None of these conditions have been alleged sub judice and Respondent is additionally unable to hypothesize any manner in which the instant decision of the Florida courts could be incompatible with Johnson or Miranda.

Petitioner then, presumably, must be arguing that the state judge's finding of fact is not one supported by the evidence. Yet, it is clear that the judge simply exercised his prerogative and decided to disbelieve Petitioner, accepting instead, in areas of conflict, the testimony of state witnesses. Such witnesses, both through in-court testimony and deposition, indicated that Petitioner had been advised of the customary Miranda warnings prior to any discussion of state law or the making of any statement on March 21, 1979. Ranger Elliott's testimony makes it clear that Petitioner expressed a willingness to discuss the Florida incident before the prosecutor made any statements as to admissibility. In any event, by this point Petitioner, as was customary, had already been told that anything that he said could be used against him. Elliott further stated that it was Petitioner who initiated the discussion of Texas law and that he was clearly told that no one knew the applicable Florida law on the admissibility of oral statements. The state judge, who observed Petitioner's demeanor during his testimony at the suppression hearing, expressly found Petitioner's tale of "confusion" to be one unworthy of belief. In his deposition, the prosecutor had described Petitioner as a "very bright young man" and sufficient evidence exists in the record to support the finding that Petitioner was not misled by any ambiguity in reference to Texas law.(See App., pt. C, 149, 153-156; pt.D, 321-4, 330).

Further, in passing upon the voluntariness of the statement at issue, the state trial judge applied the "test" enunciated by this Court, i.e. that of looking to the totality of the circum-

stances. See e.g. Culombe v. Connecticut, 367 U.S. 568 (1961); Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Hutto v. Ross, 429 U.S. 28 (1976). It is Petitioner who is in a sense "violating" this test, as he insists that one factor, his alleged mental confusion, must override all others. Accepting such position would in essence make all confessions voidable at the subsequent desire of a "repentant" confessor. Whereas only Petitioner, and all others in his position, can provide direct proof as to his state of mind at the time of the confession, it is by no means impermissible for a trial judge to look at other factors in assessing the voluntariness of such statement or confession.

In this case, the judge knew that Petitioner had given two other statements to police officers regarding this case, one prior in time to this statement* and one subsequent. Both such statements were given to Florida officials, one while Petitioner was in Texas, and one was oral and not transcribed. Petitioner made each one of these statements after advisement that anything he said could be used against him and, it must be noted, that at the time Petitioner gave his March 28th statement, i.e. one week after the incident in question, he never asked the Florida officials about the admissibility of oral statements under Florida law. Hence, he waived any opportunity he had to clear up any "confusion", assuming such ever existed in the first place. Additionally, the judge in this case was entitled to look to the fact that Peti-

* Petitioner gave a statement to Florida officials on February 27, 1979 which was not introduced at trial; prior to such statement, he executed a signed waiver of rights form. (See Appendix, Part D, 202, 203).

tioner never requested an attorney, never even alleged coercion, mental, physical or otherwise and, though incarcerated, seems to have suffered none of the physical or mental distresses incumbent upon one in his position. The judge could also note that the statement at issue, in a large sense, was a mixed one on culpability; Petitioner alleged that his since deceased co-defendant had actually pulled the trigger and committed the murder.

Adding all of this up, Petitioner failed, and continues to fail, to demonstrate that his will was overborne, whether intentionally or otherwise, by any statement of the Texas officials; there is no reason in the record to hypothesize that his statement was not one voluntarily given. In contrast to many who seek to recant their convictions, Petitioner was not under age or a mental defective or one unschooled or of low intelligence or in a particularly vulnerable state due to continued interrogation or sensory deprivation at the time the statement was made. Petitioner was repeatedly advised throughout the investigation of this case of his right not to make statements and of the attendant risk in reference to such; Miranda warnings contain the broad statement that anything said can be used against the speaker. Petitioner's tale that such warning had lost meaning for him is not worthy of credence and the trial judge in this case was in the best position to assess the likelihood that this statement, as opposed to all others given by Petitioner, was involuntary.

The presence of these other statements, as well as of other evidence against Petitioner, not cited in the instant petition, to-wit: physical

evidence obtained from his vehicle and statements made by him to private persons admitting guilt, renders quiestionalbe the extent to which a grant of certiorari would benefit Petitioner, in reference to the instant conviction. His second statement of March 28, 1979, which was played for the jury at trial, was much more detailed and graphic than that at issue; that of March 21, 1979 was primarily used for comparison purposes. Inasmuch as Petitioner has apparently abandoned his Fourth Amendment claim regarding his statements, i.e. his argument that all statements are suppressible fruits of an illegal vehicle search, the extent to which the "fate" of any one statement overshadows that of another seems questionable.

In specifically analyzing the extent to which one "involuntary" statement may taint any successive statement, courts have looked primarily to the identity of the parties, i.e. whether the police agencies involved were acting "hand in glove". See United States v. Thor, 512 F.2d 811 (5th Cir.), cert. denied, 423 U.S. 1014 (1975); United States v. Gresham, 585 F.2d 103 (5th Cir. 1978). Petitioner has never made an allegation that the Texas and Florida officials were acting in concert and, accordingly, it would not seem that the statement of March 28th is "vulnerable" due to any attack on its predecessor. Additionally, even if the traditional Fourth Amendment "taint" analyses were applicable, i.e. those utilized in Brown v. Illinois, 422 U.S. 590 (1975), Dunaway v. New York, 442 U.S. 200 (1979) and Taylor v. Alabama, 457 U.S. 687 (1982), such rationales would not benefit Petitioner. The statements in this case were separated by a week's time, given to different police personnel and,

certainly as to the more recent, given following supervening Miranda warnings and the execution of a signed waiver of rights. Thus, the bulk of the incriminating evidence against Petitioner remains admissible, regardless of the fate of any attack upon the instant statement, and the granting of certiorari sub judice would be of little benefit.

VI. CONCLUSION

For the foregoing reasons, Respondent maintains that the instant petition should be denied. Due to lack of proper objection at trial as to the admission into evidence of that statement at issue in the instant petition, Petitioner failed to properly present this question to the state court below. Additionally, assuming such courts did in fact consider Petitioner's claim, their rejection of it would be in accordance with this Court's prior precedents and would be supported by the facts as developed below. Lastly, the instant statement was one of several introduced against Petitioner at his trial, and Petitioner has not demonstrated that its exclusion from evidence would have tipped the balance in his favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I RICHARD B. MARTELL, do hereby certify that I am a member of the Bar of the Supreme Court of the United States, and that I have served a copy of the Response to Petition for Writ of Certiorari to the Supreme Court of Florida, by depositing same in the United States mail, first class postage prepaid, as follows:

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All parties required to be served have been served on this 2nd day of February, 1984.

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